

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 BAYER AG, et al.,

2 Plaintiffs

3 v.

4 BIOVAIL LABORATORIES, INC.,
5 et al.,

6 Defendants.

CIVIL NO. 98-1282 (RLA)
CIVIL NO. 98-1340 (RLA)
CIVIL NO. 98-1494 (RLA)
CIVIL NO. 98-1768 (RLA)

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9 **SECOND OMNIBUS ORDER**
10 **SETTING DISCOVERY TIME-TABLE AND**
11 **SCHEDULING STATUS CONFERENCE**

12 The following matters pending in these proceedings are hereby
13 disposed of as follows.

14 **Protective Order Governing Confidential Information**

15 The Court having reviewed the motions submitted by the parties
16 agrees with the arguments of defendants BIOVAIL LABORATORIES, INC.
17 and BIOVAIL INTERNATIONAL, INC. regarding the scope of the
18 protective order to be issued in these consolidated actions.¹

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24 ¹ See Biovail's Memorandum... and Request for Protective Order
25 Governing Disclosure of Information (docket No. 49); Motion for
26 Entry of a Protective Order Governing Confidential Information,
filed by plaintiffs (docket No. 48) and Biovail's Response...
(docket No. 51).

61 no

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3 Accordingly, the Court has adopted the suggestions submitted
4 by defendants² in the Protective Order Governing Confidential
5 Information issued separately on this date.

6 **Defendants' Motion for Summary Judgment**

7 The Court finds plaintiffs' petition to conduct discovery prior
8 to responding to defendants' summary judgment request is justified.

9 Accordingly, Plaintiffs Bayer and Pfizer's Motion for Denial or
10 Continuance of Defendant's Summary Judgment Motion Pursuant to
11 Fed.R.Civ.P 56(f) (docket No. 46) is **GRANTED**³ and Biovail's Motion
12 for Summary Judgment...⁴ is **DENIED WITHOUT PREJUDICE**.
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18 ² In particular see ¶ 6 (information restricted to outside
19 counsel); ¶ 7 (attorneys limited to three (3) for each party); and
20 ¶ 8 (regarding scope of outside counsel limitation).

21 ³ Defendants' Motion for Enlargement of Time (docket No. 50)
22 is **GRANTED**. See also Biovail's Opposition to Plaintiffs' Motion for
23 Denial or Continuance (docket No. 52). Plaintiffs' Motion for Leave
24 to File a Reply to Biovail's Opposition... (docket No. 54) is
25 **GRANTED**. See Biovail's Opposition to Plaintiffs' Motion for Leave
26 (docket No. 55). Plaintiffs' Motion to Strike Opposition.. (docket
No. 57) is **DENIED**; leave to file reply is **GRANTED**.

⁴ See Notice of Service of Motion for Summary Judgment (docket
No. 44). Defendants' Request for Leave to File Motion for Summary
Judgment (docket No. 53) is **GRANTED**.

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Discovery Schedule

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4 Discovery on the issue of infringement, both literal and under
5 the doctrine of equivalents shall proceed as follows:⁵

6 **10/15/99** Deadline for parties to propound written discovery.
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8 **10/30/99** Deadline for plaintiffs to identify expert witnesses.
9
10 **11/30/99** Deadline for defendants to identify expert
11 witnesses.
12
13 **12/30/99** Deadline for depositions of parties and fact
14 witnesses.
15
16 **12/30/99** Deadline for plaintiffs' expert witness reports.
17
18 **1/31/2000** Deadline for defendants' expert witness reports.
19
20 **2/29/2000** Deadline for depositions of expert witnesses.

Status Conference

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22 The Court having disposed of all outstanding issues at this
23 time finds that a meeting with the parties after the initial
24 discovery has concluded will be more productive.⁶

25 ⁵ See Plaintiffs' Memorandum in Support of its Position
26 Regarding the ISC Order (docket No. 47) and Biovail's Memorandum in
Support of Biovail's Proposed Scheduling Order... (docket No. 49).

⁶ Biovail's urgent Motion Requesting a Status Conference
(docket No. 56) and Biovail's Renewed Urgent Motion Requesting a
Status Conference (docket No. 58) are **DENIED**. See Plaintiffs'
Opposition... (docket No. 59).

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Accordingly, a STATUS CONFERENCE is hereby set for **March 17, 2000, at 10:30 a.m.** The parties shall file a JOINT STATUS REPORT no later than **March 10, 2000** advising the Court of the status of discovery proceedings as well any matters that need to be addressed at that time.

IT IS SO ORDERED.

San Juan, Puerto Rico, this ¹⁷ day of September, 1999.

(13)
Llr



RAYMOND L. ACOSTA

United States District Judge